



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201123035**

Release Date: 6/10/2011

Date: March 18, 2010

501.12-03

Legend:

Date A :

State B:

State C:

U :

Dear

We have considered your ruling request dated May 26, 2010, regarding the tax consequences of the proposed transaction described below.

Specifically, you have requested the following ruling:

- (1) Whether an organization exempt under section 501(c)(12) of the Internal Revenue Code can surrender its tax-exempt status and operate as a for-profit cooperative through the filing of a final Form 990 return.

You are exempt from federal income tax under section 501(c)(12) of the Code. You are an electric distribution cooperative incorporated on Date A under the laws of State B. You serve more than U homes, farms, businesses and industries in various counties in State B and State C.

As a distribution cooperative, you purchase electric power under the all-requirement contracts with other power companies and cooperatives, and deliver the power to your customers over your distribution lines. Due to significant economic growth in your service area, you have incurred substantial additional capital expenditures to serve your customers. You anticipate that further financings will be necessary to fund additional capital expenditures.

You have expressed concern that your continued operations will limit your ability to seek and obtain additional financing to fund your capital improvements. Thus, because you will need additional flexibility in the forms of financing utilized, you want to terminate your tax-exempt

status under section 501(c)(12) of the Code.

In addition, you have stated that once “the Internal Revenue Service recognizes [your] status as a taxable cooperative, [you] need to remain taxable until such time as [you] seek and receive a determination letter from the Service that [you] again qualify as a tax-exempt entity.” You have noted that “this is important in that the contemplated financing can be adversely affected by [your] classification as a tax-exempt entity.”

Law:

Section 501(c)(12) of the Code provides for the exemption from federal income tax of benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses. Mutual and cooperative electric companies are considered to be “like organizations” for these purposes. Rev. Rul. 67-265, 1967-2 C.B. 205.

Section 6043(b) of the Code provides that an organization which for any of the last five taxable years preceding liquidation, dissolution, termination, or substantial contraction was exempt from taxation under section 501(a) shall file a return and other information with respect to the liquidation, dissolution, termination, or substantial contraction as the Secretary of the Treasury may prescribe.

Rev. Rul. 65-99, 1965-1 C.B. 252, provides that the 85 percent member income test is applied on the basis of an annual accounting period. Failure to meet the requirement in a particular year precludes exemption for that year, but has no effect upon exemption for years in which the 85 percent test is satisfied. Specifically, if for any year the income received from a transaction, together with other nonmember income, causes the organization's income from members for the year to fall below 85 percent, the organization is required to file a corporation income tax return, Form 1120, for that year.

Rationale:

In your situation, you want to surrender your tax-exempt status and operate as a for-profit cooperative through the filing of a final Form 990 return.

An organization that no longer wants to be exempt under section 501(a) of the Code will need to file a final return as described in section 6043(b). Once the final return is filed, the organization will no longer be described under section 501(a).

Even though an organization described under section 501(c)(12) of the Code is required to file Form 1120 for the years it does not satisfy the 85 percent member income test, it is still recognized as an exempt organization until it wants to surrender its exempt status. See Rev. Rul. 65-99. However, in your case, you want to surrender your tax-exempt status and file a final return as required by section 6043(b). Once you file your final return, you will no longer be recognized as exempt under section 501(c)(12).

Accordingly, based on the above, we rule as follows:

- (1) An organization exempt under section 501(c)(12) of the Code can surrender its tax-exempt status and operate as a for-profit cooperative through the filing of a final Form 990 return.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437